

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:30 p.m., in Township Hall, Sergeantsville, New Jersey, as supported by the virtual meeting procedures via ZOOM.

#### PLEDGE OF ALLEGIANCE

#### STATEMENT

Chair Cline read a statement noting that the requirements of the Open Public Meetings Act had been met.

#### ROLL CALL

Present: Emmons, Fowler, Gilbreath, Kenyon (7:32 p.m.), Manley, McAuliffe, Warren, Cline

Absent: Szwed

Also present: Board Attorney Goodell, Board Engineer O'Brien, Board Planner Kyle

MINUTES: October 28, 2021

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Warren to approve said minutes. Member Fowler seconded the motion. Said motion was approved by voice vote.

MEMORIALIZATIONS – none

#### APPLICATIONS

Brant Switzler, Block 55, Lot 2, use variance approval requested for tennis training facility, continued from 04.29.21 special meeting; and regular meetings of June 10, 2021 and July 8, 2021; continued from special meeting of July 22, 2021.

Administrative Officer Klink read into the record an email from Erica Edwards, attorney for the Applicant. Said communication asked for an adjournment to the January 13, 2022 meeting. It was noted that this request was made on behalf of both the applicant and Mr. Simon, the objector's attorney.

Attorney Goodell noted that the Board does have jurisdiction over this meeting and can adjourn the application with notice being given at this meeting for the re-scheduling. It was noted that all professionals are available for the January 13 meeting.

Member Gilbreath made a motion to adjourn the hearing with notice being given at this meeting. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Kenyon, Manley, Warren, Cline

Concurs: McAuliffe

Nay: None

Absent: Szwed

Administrative Officer stated that no applications have been submitted to date. The Board noted that the January 13 meeting will be dedicated to this application.

Per Ms. Edwards' communication, a request was also made to schedule a special hearing on January 20 or January 27. In polling the Board members and professionals, it was noted that only January 27 works, but that this will be decided at the January 13 meeting. Chair Cline asked Administrative Officer Klink to put a notation on the meeting room calendar for that date.

Weiss, Block 44, Lot 4.03, use variance application requested for automotive repair and maintenance within an existing barn-structure; with associated variances, as needed.

Mr. Gruenberg was present as attorney for the applicant. He thanked the Board for scheduling the first hearing as a special meeting, he noted that the applicant appreciated that it was scheduled. He also thanked the Board for allowing the applicant to respond to questions that were raised at the first hearing.

Chair Cline noted that the meeting will be opened for public comment at tonight's meeting.

Mr. Rupnarain was previously sworn in. He presented the revised map with the changes requested by the Board's Engineer and by the Board. He noted that there are topographic lines that have been added to the map to show drainage around the subject building. Mr. Rupnarain noted that the larger parking lot drains in an easterly direction around the subject building and towards the pond. He noted that the remainder of the parking area drains down the driveway and into the creek across the street. Mr. Rupnarain also noted that the revised map shows the concrete area that is to be leveled to enable ADA compliance. He noted that the dumpster location is on the concrete in the southwesterly corner of the subject building and that the loading zone would include a dumpster enclosure. Mr. Rupnarain stated that the width of the driveway and the square footage of the buildings have been added to the map.

Mr. Gruenberg stated that these revisions addressed some of the comments made by the Board at the last meeting. Mr. Gruenberg stated that the applicant will agree to any other revisions that may result from tonight's meeting.

Mr. Rupnarain discussed the aquifer upon which this property sits; it was noted that this question arose at the first hearing. Mr. Rupnarain stated that per NJ DEP GeoWeb that this is the Brunswick aquifer that starts at the Delaware River and extends northeast to the New York border. He noted that this is not a localized aquifer, but a very large one. He noted that concerns have been raised about the concrete-floored buildings. He noted that this type of floor is suited to spill containment and that other spillage features can be added to control any spills that may occur on this site.

Mr. Gruenberg noted that there is no increase in the impervious coverage on this property.

Chair Cline noted that there are two soil logs shown on the map. Mr. Rupnarain stated that this work was done prior to his involvement. Chair Cline noted that information about a potential reserve septic is always useful. Mr. Rupnarain stated that he has no information on these test results.

Chair Cline expressed his concern about the concrete floor and the possibility of a spill sloping out of the building. Mr. Rupnarain stated if there is a spill, the applicants will make sure to contain it within the structure. Mr. Gruenberg stated that the applicant will address potential spillage.

Member Kenyon asked about the paved parking lot and how it is related to the terrain. Mr. Rupnarain stated that the north part of the lot flows to the pond over grass. He noted that the westerly side of the building goes down the driveway. It was noted that there is culvert that goes from the pond and then under Dunkard Church Road towards the Third Neshanic.

Member Manley asked about the water flowing down the driveway. It was noted that there is a road culvert further to the west on Dunkard Church Road. Mr. Rupnarain stated that he does not know the location of any inlets. He noted that the water flows along the edge of the road until it hits the culvert.

Member Manley asked about floor drains in the concrete floor. It was noted that there are none.

#### Public Questions for Mr. Rupnarain

Valerie Tucci of 21 Sandy Ridge Road was present. She noted that per the previous resolution on this property, the property had an industrial designation. She asked if there had been any testing of the ground for chemicals. She also asked what chemicals were used by the previous industrial use. Mr. Rupnarain stated that the owner had the water tested for the house and no negative results were shown. He noted that no soil testing was done.

Chair Cline stated that he understands the concern about the chemical usage of the previous use. Chair Cline asked when that industrial use ceased, to which no answer is known.

Ms. Tucci asked how the silo is to be used. Mr. Gruenberg stated that Mr. Morlock will testify to that.

Mr. David Bond, owner of Block 44, Lot 1, was present. He stated that he has lived next to this property for 80 years. He noted that the property was once a dairy farm with about 40 to 50 cows and that there was always plenty of water for the dairy farm. He noted that the current building was built for the industrial use that was granted to this property. Mr. Bond stated that fire safety was "built" into the building. He noted that when the original barn burned down the building became more industrial. Mr. Bond stated his understanding of the previous use. He noted that diesel fuel was

used in the industrial process. He noted that it was stored in vats and that once per week the vats were pumped out. He stated that he has never seen anything run down out of the building.

Mr. Bond stated that the property became a real mess and looks much better today. He opined that this use seems like a perfect fit for this building. He stated that he had no idea when the industrial use on the property ceased.

Chair Cline thanked Mr. Bond for his comments, but that this is more a time for questions of the expert.

There were no engineering questions from the zoom participants.

Board Engineer O'Brien asked about the parking. He noted that fourteen spaces are required. Mr. Rupnarain stated that 14 spaces are being provided. Mr. Rupnarain noted that one ADA space is required and being provided.

Board Engineer O'Brien asked about the ADA parking space. Mr. Rupnarain noted that the area for the ADA space will be striped. He noted that the building will be exposed in the area that needs leveling. Board Engineer O'Brien asked to see better details about this work.

Board Engineer O'Brien stated that a detailed grading plan needs to be provided and approved by the Municipal Engineer.

Mr. Weiss was present and had been previously sworn in. He stated that he spoke with the son of the previous owners who could state that the industrial process stopped in 2002, about 20 years ago.

Mr. Jay Morlock was sworn in. He stated that he lives at 90 Biser Road and has owned that property for eight years, with his girlfriend, Regan Pickard. He stated that his home is about three miles from the subject property and that both properties use the same aquifer. He stated that he personally farms nine acres and that 40% of his hay sales go to local residents.

Mr. Morlock stated that M&W has been in business for about twelve years. He noted that M&W would like to use the industrial building as a commercial auto repair shop. He noted that he wanted to live on a farm because that is where he grew up. He also noted that farming does not provide enough income to maintain the property. He noted that the M&W shop would provide the extra income to maintain the property.

Mr. Morlock addressed the concerns about oil spills. He noted that they currently handle all spills at the Stockton location. He stated that since the October 28 meeting, he and his partner have done more research on spills. He noted that they use Safety Klean Diposal, which is a nationwide chain. He noted that Safety Klean will pick up oil filters and absorbent pads. He noted that they have water-based parts cleaning, with a contract for disposal. He noted that the sink is a sealed tub and that compressed air is used to create a jet. Used water is contained in tanks and tanks are exchanged for clean ones. He noted that they have absorbent mats to catch any potential drips, as work is done. He noted that they have a service agreement for those mats. Mr. Morlock stated that measures have been added for the subject property in addition to the ones currently used in the Stockton operation. He noted that there is a spill-containment kit with portable absorbent curbing, which is then collected and placed into a safety container.

Chair Cline asked about the water-based cleaning system. Mr. Morlock stated that no solvents are used. Mr. Gruenberg stated that the applicants have invested in this system to provide more secure safety measures.

Board Planner Kyle asked if these measures being described are required by the State. Mr. Morlock stated that there are some systems required by the State, but that some of the other safety measures being provided by the applicant are not required by the State.

Board Attorney Goodell suggested that a condition could be created to list these measures to be in operation. The applicants agreed to such a condition.

Mr. Gruenberg stated that the applicants agree to engage a waste collection contractor or service that would provide these services: waste collection for oil, filters, mats; a spill kit on site at all times. Chair Cline asked how often this pick-up would occur. Mr. Morlock stated that the pick-up would be quarterly because their volume is far lower than typical shops. He noted that such traffic would be minimal traffic to add to the area.

Member Kenyon asked about the used oil storage. Mr. Morlock noted that the used oil is stored in 75-gallon containers and is the only hazardous waste that would be found in the building. Member Kenyon asked about a concrete floor that is 35 years old. Mr. Morlock noted that the floor is of sound condition, with no fissures or cracks.

Member Manley asked about the improvements made in the containment systems. Mr. Morlock stated that they should be able to upgrade as technologies improved.

Chair Cline asked about the silo. Mr. Morlock stated that it contains the internal stairwell between the levels.

Member Fowler questioned if compliance records could be provided, showing a schedule of dates when things are done. Board Attorney Goodell stated that there is no one to enforce such a condition. He noted that the applicants would be able to show a record of compliance by making their contracts available should they need to be viewed.

Ms. Tucci asked about the use of the silo. The applicants agreed to a condition that there be no human habitation on the second floor. Chair Cline also asked them to agree to downward-shining exterior light. Applicants agreed.

Ms. Tucci expressed her concern about the lack of EPA evaluation of the soil. She noted that the first resolution was adopted in 1973 and the second was adopted in 1982. She noted that this is a long time for organic solvents in the ground.

#### Public Comment

Mr. Ray Aron of 54 Sanford Road was sworn in. He stated that he is present with his entire family. He stated that he is here in support of Jay Morlock. Mr. Aron stated that he is a lifelong resident and related a story of how he and Mr. Morlock met. Mr. Aron also stated that his father wanted to be present to show support as well; Mr. Aron's father has been a resident since 1971. Mr. Aron stated that M&W is trying to keep things at home. He stated that Mr. Morlock and Ms. Pickard are responsible and caring members of the Township community. Mr. Aron stated that he feels this use would benefit the Township.

Mr. Steve Smotrich was sworn in, he lives at 664 Rosemont Ringoes Road. He stated that he is present in support of the applicants. He stated that he has been clients of M&W for many years. He stated that he is very impressed with their operation, noting that M&W does not overbook, and that the schedule is based on when the vehicles can come in and then be completed. He noted that it is a clean and professional operation and that he strongly supports the application.

Mr. Mark Knudsen of 124 Lower Creek Road was sworn in. He stated that he has been a client of M&W for about ten years. He noted that it is a very clean operation and that the owners are very astute at holding the line on what service is needed. He stated that he supports the application.

Mr. Gustavo Fonjul was sworn in, he lives at 51 Rittenhouse Road. He stated that he has been a customer of M&W since they opened. He stated that he finds them to be honest and fair; and that he supports the request for a variance.

Ms. Gayle Conover was sworn in, she lives at 60 Covered Bridge Road. She stated that she supports the application. She noted that the application process has been thorough, following all Board recommendations. She noted that M&W has many happy customers and supports the application.

Mr. Brian Garots of 20 Stone Signpost Road was sworn in. He stated that he has known the applicants for 28 years. He stated that he has found them to always be helpful. He stated that the shop is safe and clean. He stated that he approves of keeping the neighborhood cars going, and he approves of the niche market. He stated that he approves of the variance to keep the business going.

Ms. Christine Yazujian was sworn in, she lives on Rittenhouse Road. She stated that her husband, David, is unable to be present and that she is expressing both her opinion and his. She stated that they want to support Jeremy. She noted that they have been long-time customers of M&W. She noted that M&W does the utmost job on any vehicle and that they will only entrust their vehicles to Jeremy, and M&W. She stated that they support the application.

There were no Zoom comments, Chair Cline closed the public comment.

Mr. Gruenberg provided a summation. He thanked the Board and noted that applications such as these work better when Board members ask lots of questions. He noted that it is rare to have an audience of people in support of the applicant. He noted that most that are present are well aware of the operation provided by M&W.

Mr. Gruenberg stated that the previous planning testimony addressed the positive and negative criteria. He noted that the proposed use is not permitted in the zone and that an approval would create two principal uses on the same lot. He noted that the proposed use is akin to a home occupation. He noted that there would only be two employees and one lives on site. He noted that the business would be housed completely within a building that had previous use before this Board. He noted that an approval would allow the business use to take place in a safe way.

Mr. Gruenberg discussed the negative criteria. He noted that this use is unique, suited to this property and this building. He noted that at the previous meeting an audience member asked the question about where does it end. Mr. Gruenberg noted that it would be difficult to find a similar application with a building and use like this. He noted that there is no substantial detriment to the public good, zone plan, or zoning ordinance.

Conditions were discussed and noted, below:

- All activities will be conducted within the structure.
- No signage, see Member Fowler comments about a two-square foot identification sign for delivery purposes
- No outdoor storage
- No gasoline pumps or tanks outside (no gas service)
- Employees will be limited to the resident of the property and one other, for a total of two.
- Monday through Friday, 8 am to 5 pm
- Three-yard dumpster pick up from once every two weeks, to be enclosed if requested
- Containment system at area of transfer connection for waste oil
- Waste including oil filters, rags, PIG mats, etc., to be removed by same company
- Existing lighting to be replaced with down lit fixtures to shield the lighting from neighbors
- Heating oil tank to be relocated from outside to inside the building
- Even out concrete lip and provide wheel stops
- No human habitation on second floor
- Grading plan to be approved by the Municipal Engineer
- ADA parking and bathroom
- No body work
- No hauling

Board Planner Kyle commented about the addition of landscaping. He noted that per the agreement of the abutting neighbor, there will be no additional landscaping at the rear parking area. Board Planner Kyle suggested that there could be six to eight shrubs added along the loading area to shield this area from Dunkard Church Road. It was noted that recommended shrubs are referenced in the Zoning Ordinance.

Chair Cline commented on the support and positive response to application. He noted that the Board must consider positive and negative effects on the Township. He noted that this is not a typical use that is permitted in the agricultural zone. He noted that the property has already been granted a variance for an industrial use and that the proposed commercial use is less intrusive. He also noted that the conditions provide a positive effect for the proposed use. He further noted that the Master Plan does address various methods of income that could be provided to help preserve farmland.

Member McAuliffe stated that he agreed with the comments made by Chair Cline. He also stated that it is good to see the positivity and support from the public for an applicant. He noted that this large building exists and putting the proposed use inside of this building is a good use.

Member Kenyon agreed with the previous statements. She noted that if the character of the applicant was a condition this would be a slam dunk. She noted on the positive side that the property is suited due to the preexisting building of considerable size that will accommodate the business within the building. She noted that she is concerned that the size of the building could support expansion of the business. She noted that Applicant Weiss agreed to a limited number of customers at one time, which could be difficult to enforce. She noted that Applicant Weiss stated that only two people can do so much at a time which does control the number of vehicles on site. She noted that it was agreed that the cars on site would be contained within the building. She noted that if the applicant sold the property the size of the business is limited

by the conditions, and the conditions run with the land; specifically, that the use is owner-occupied with one other employee.

Member Kenyon stated that she appreciates the support shown to the applicants. She noted that an auto repair business in a commercial zone would be a conditional use with limitations. She noted that the limitations make the use a unique one that does not impair the intent and purpose of the zone plan. She concluded by stating that the applicant made a compelling argument.

Member Manley stated his concerns. He noted that these employees will only take what can be done. He stated that he is concerned that the control of that situation could change if someone else takes over. He stated that when he first received this application, he was skeptical of the application, that he did not want to see a commercial use in the area. He stated that M&W enjoys a good reputation and displays good business practices. He stated that appreciated the presentation and getting questions answered.

Member Gilbreath stated that she agrees with these statements. She noted that within the ordinance, §230-3 discussing the fundamental purpose of providing development options for property owners. She noted that this was a good presentation.

Member Emmons agreed with the previous comments and also appreciated the good presentation.

Member Warren concurred with these thoughts.

Member Fowler stated that he would like to challenge one thing, which is the elimination of signage. He noted that there should be a sign so that a delivery does not go to the wrong place. He noted that the sign size could be reduced to meet that purpose. There was a discussion about what the ordinance allows. It was noted that §230-33g, under Bed-and-Breakfast Establishments, addresses an identification sign: two-sided; no larger than 2.25 square feet; unilluminated, not flashing, or otherwise un-noticeable.

Member Fowler stated that this use allows for the enjoyment of the agricultural neighborhood by maintaining the agricultural space. He also noted that the proposed use is not totally out of character and that the proposed use reduced the use from industrial to commercial.

Member Fowler made a motion to approve the application as presented and conditioned. Member Gilbreath seconded the motion.

**Roll Call Vote**

Aye: Emmons, Fowler, Gilbreath, Kenyon, Manley, Warren, Cline

Concurs: McAuliffe

Nay: None

Absent: Szwed

Planning Board Update: Liaison Cline

Liaison Fowler reported. He noted that the Planning Board did meet with no significant action. He noted that there was some discussion about the Stormwater Management committee, which is to be reinstituted by the Township Committee.

Bill List – none submitted

ADJOURNMENT: 9:00 p.m.

It was moved, seconded, and unanimously carried to adjourn at the noted time.

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer/Secretary